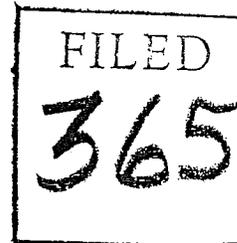


POLITICAL SUBDIVISIONS:
PUBLIC WATER SUPPLY DISTRICTS:
TAXATION:
 EXEMPTIONS
 SALES TAX

The 1965 Amendments to Chapter 144 do not relieve a public water district formed under the provisions of Section 247.010 et seq. RSMo 1959 from collecting sales tax from domestic, commercial or industrial consumers to whom it sells water and remitting the same to the Department of Revenue.

OPINION NO. 365

October 26, 1967



Honorable Paul McGhee
Prosecuting Attorney
Stoddard County
16 North Elm Street
Dexter, Missouri 63841

Dear Mr. McGhee:

This is in answer to your request for an opinion of this office which reads as follows:

"I respectfully request your official opinion as to whether a public water supply district organized under the provisions of Sections 247.010 et seq. RSMo 1959 must collect sales tax from the persons to whom it sells water within its district, and remit the same to the State."

Section 39 of Article III of the Missouri Constitution, 1945, provides:

"The general assembly shall not have power:

* * * * *

(10) To impose a use or sales tax upon the use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision."

This office in Opinion No. 109 written to the Honorable Don R. Ferry, Prosecuting Attorney for Vernon County on April 25, 1967, held, that the proper definition of the term "other political subdivision" as used above is found in Section 15, Article X of the Missouri

Honorable Paul McGhee

Constitution, and includes public water supply districts formed under the provisions of Sections 247.010 through 247.220, RSMo 1959, as amended.

Section 144.020-1(3), RSMo Supp. 1965, imposes upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable services at retail in this state "A tax equivalent to three per cent of amounts paid or charged on all sales of electricity or electric current, water and gas, natural or artificial, to domestic, commercial or industrial consumers."

Prior to 1965, in an opinion written on October 29, 1946, to the Honorable E. F. Bertram, Representative of Scotland County, this office held that the constitutional prohibition did not forbid collection of tax on sales of electrical current and water by a municipally owned light and water plant because the taxes were paid by the consumer, and the plant merely acted as the agent or conduit through which the state sought to facilitate the accounting for and the collection of the tax from the purchaser of light and water who is the taxpayer.

However as a result of the decision of *Automagic Vendors, Inc. v. Morris, Mo.Banc.*, 386 S.W.2d 897, and *Automatic Retailers of America, Inc., v. Morris, Mo.Banc.*, 386 S.W.2d 901, Chapter 144 was amended changing it from a "sales" tax to a "gross receipts" tax. The tax is no longer imposed upon the buyer, but upon the seller for the privilege of engaging in business. Sections 144.020, 144.021 and 144.080, RSMo Supp. 1965. But in our opinion this change does not relieve a political subdivision from the duty of collecting and paying the tax.

It is clear that the provisions of Chapter 144, as amended, are still applicable to sales by a public water supply district. The tax still is imposed upon all "persons" engaged in selling water to domestic, commercial or industrial consumers. Section 144.020-1(3), RSMo Supp. 1965. No change was made in Section 144.010-1(5) which includes political subdivisions within the definition of the word "persons". Although the tax is now imposed upon the seller based upon his gross receipts the seller still is required to collect and the buyer to pay the tax under the bracket provisions of Section 144.285, RSMo Supp. 1965.

Nor do we think the obvious legislative intent to include political subdivisions within the requirements of Chapter 144 is frustrated by the constitutional prohibition. There is no "use purchase or acquisition of property" by the water supply district in this case, and since the incidence of the tax falls upon the consumer, the taxes are not "paid for out of the funds of any * * * political subdivision".

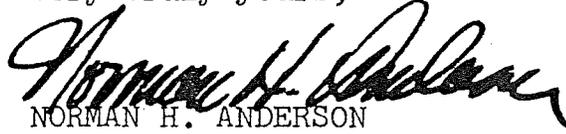
Honorable Paul McGhee

CONCLUSION

The 1965 Amendments to Chapter 144 do not relieve a public water district formed under the provisions of Section 247.010 et seq. RSMo 1959 from collecting sales tax from domestic, commercial or industrial consumers to whom it sells water and remitting the same to the Department of Revenue.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John H. Denman.

Very truly yours,



NORMAN H. ANDERSON
Attorney General

Enclosures - Opinion No. 109
4/25/67 - Ferry

Opinion No. 7
10/29/46 - Bertram